IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 1 of 1986

with

GIFT TAX REFERENCE No 23 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF GIFT TAX

Versus

BHANUMATI N SURTI

Appearance:

1. GIFT TAX REFERENCE No. 1 of 1986
MR BB NAIK for MR RP BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 25/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

In Gift Tax Reference No. 1 of 1986 which pertains to the assessment year 1979-80, the following question is referred for the opinion of this Court:-

"Whether, the assessee could be said to have transferred, assigned and conveyed unto the trustees beneficial interest in respect of 75% of the partnership rights in M/s. Surti Iron and Engineering Company under trust deed dated 15-9-1975 and hence 75% of 60% share of profit is required to be excluded from the taxable gift of the assessee?"

2. Gift Tax Reference No.23 of 1987 pertains to the assessment year 1976-77 and the following question has been referred:-

"Whether, on the facts and in the circumstances of the case, Rs.40,246/- had been rightly deleted from taxable gift of the assessee ?"

3. The Tribunal has held that there was no taxable gift made by the assessee in light of its own findings for assessment years 1976-77 to 1978-79 in assessee's own case in income tax proceedings.

4. The assessee is a lady and she was a partner in a partnership firm known as M/s. Surti Iron and Engineering Works having 65% share. It appears that by a trust deed dated 15-9-1975, the assessee assigned, transferred and conveyed unto the trustees beneficial interest and, in particular, all rights, title and interest which she had in the firm to the extent of 75% of 65% share in the firm. In the income tax proceedings, the income was brought to tax on the ground that the assessee had not parted with the income producing asset and only the income which was earned, by being partner to the extent of 65% in the partnership firm, was handed over to the trust. In the said proceedings, it has been held by the Tribunal that the assessee had in fact transferred her share in the partnership firm and hence the income was received by the trust by virtue of overriding title.

5. For the two assessment years under consideration, the same income was sought to be treated as a gift on the basis of the same reasoning which was adopted for the income tax purposes.

6. In the case of Sunil J. Kinariwala vs. CIT 211 ITR 127 this Court has held in similar fact situation that the assessee had divested himself of the income producing apparatus or asset by overriding title created in favour of the beneficiaries of the trust. That it was not necessary that the capital owned by the assessee should also be transferred. Applying the aforesaid ratio to the facts of the present case, once it has been found by the Tribunal that what had been transferred was the beneficial interest and, in particular, all the rights, title and interest of the settlor in the firm and as a consequence the income had been diverted by overriding title, the Tribunal was right in law in holding that there was no gift of the said income.

7. Both the questions are, therefore, answered in the affirmative i.e. in favour of the assessee and against the revenue.

8. The References are disposed of accordingly with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

zgs/-